

TITLE 14: COMMERCE
SUBTITLE C: ECONOMIC DEVELOPMENT
CHAPTER I: DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY

PART 521
DATA CENTER INVESTMENT PROGRAM

Section

521.10	Purpose
521.20	Definitions
521.30	Eligible Applicants
521.40	Eligibility Determination
521.50	Form of Application
521.60	Application Review
521.70	Application Denial/Approval
521.80	Determination of Term of Exemptions and Amount of Credit
521.90	Data Centers Memorandum of Understanding
521.100	Certificate of Exemption or Verification
521.110	Noncompliance with Memorandum of Understanding

AUTHORITY: Implementing Section 605-1050, and authorized by Sections 605-95 and 605-55, of the Department of Commerce and Economic Opportunity Law [20 ILCS 605].

SOURCE: Adopted at 46 Ill. Reg. _____, effective _____.

Section 521.10 Purpose

The Department shall issue certificates of exemption from the Retailers' Occupation Tax Act [35 ILCS 120], the Use Tax Act [35 ILCS 105], the Service Use Tax Act [35 ILCS 110], and the Service Occupation Tax Act [35 ILCS 115], all locally-imposed retailers' occupation taxes administered and collected by the Department of Revenue, the Chicago non-titled Use Tax, and a credit certification against the taxes imposed under Section 201(a) and (b) of the Illinois Income Tax Act [35 ILCS 5] to qualifying Illinois data centers. [20 ILCS 605/605-1025(a)]

Section 521.20 Definitions

The following definitions are applicable to this Part.

"Applicant" means a taxpayer that is an owner or operator of a data center located in Illinois that seeks certification of that data center in order to claim the exemptions or credits created by Section 605-1025(a) of the Statute.

"Application" means the data center owner or operator's application for approval of the data centers investment tax exemption.

"Capital Investment" means the purchase, renovation, rehabilitation, or construction of permanent land, buildings, structures, equipment and furnishings used directly for or in the project, and any goods or services for the project that are purchased and capitalized under GAAP or an equivalent accounting principles system approved by the Department, including any organizational costs and research and development costs incurred in Illinois. Capitalized lease costs for land, buildings, structures or equipment shall be included in "Capital Investment" only if the lease term, including any extensions or options to extend, equals or exceeds the term of the memorandum of understanding, and provided that the lease costs are valued at their present value using the corporate interest rate prevailing at the time the data center owner or operator filed its application with the Department.

"Certificate of Exemption" means the certificate issued by the Department pursuant to the Memorandum of Understanding entered into between the Department and the data center owner or operator that authorizes the data center owner or operator to receive the tax exemptions set forth in Section 605-1025(a) and (b) of the Statute.

"Credit" means 20% of the wages paid during the taxable year to a full-time or part-time employee of a construction contractor employed by a certified data center if those wages are paid for the construction of a new data center in an underserved area. [35 ILCS 5/229(a)]

"Data Center" means a facility:

whose primary services are the storage, management, and processing of digital data; and

that is used to house:

computer and network systems, including associated components such as servers, network equipment and appliances, telecommunications, and data storage systems;

systems for monitoring and managing infrastructure performance;

internet-related equipment and services;

data communications connections;

environmental controls;

fire protection systems; and

security systems and services. [20 ILCS 605/605-1025(c)]

A data center may consist of a building or a series of buildings that is rehabilitated or constructed to house working servers in one physical location, several adjacent sites, or multiple locations within a municipality or county.

"Department" or "DCEO" means the Department of Commerce and Economic Opportunity. [20 ILCS 605/605-5]

"Director" means the Director of the Department of Commerce and Economic Opportunity. [20 ILCS 605/605-5]

"Full-Time Employee" means an individual who is employed by the data center owner or operator or a tenant of the data center for consideration for at least 35 hours each week or who renders any other services generally accepted by industry custom or practice as full-time employment. In the event that the data center owner or operator or a tenant of the data center intends to include any individual as a full-time employee based upon that individual providing services generally accepted by industry custom or practice, rather than a minimum 35-hour work week, the data center owner or operator or a tenant of the data center must receive written approval from the Department prior to the execution of the Memorandum of Understanding entered into between the Department and the data center owner or operator. Annually scheduled periods for inventory or repairs, vacations, holidays, and paid time for sick leave, vacation or other leave shall be included in this computation of full-time employment. A person not employed by the data center owner or operator or a tenant of the data center on the last day of the taxable year is not a full-time employee.

"Full-time Equivalent Job" or "Full-time Equivalent Employee" means a job in which the new employee works for the owner, operator, contractor, or tenant of a data center, or for a corporation under contract with the owner, operator or tenant of a data center, at a rate of at least 35 hours per week. An owner, operator or tenant who employs labor or services at a specified site or facility under contract with another may declare one full-time, permanent job for every 1,820 hours worked per year under that contract. Vacations, paid holidays, and sick time are included in this computation. Overtime is not considered a part of regular hours. [20 ILCS 605/605-1025(c)]

"Illinois Procurement Code" means 30 ILCS 500.

"Illinois State Income Taxes" means all of the taxes imposed against the data center owner or operator or a tenant of the data center under Section 201(a) and (b) of the Illinois Income Tax Act.

"Incremental Income Tax" means the total amount withheld during the taxable year from the compensation of new full-time and full-time equivalent employees under Article 7 of the Illinois Income Tax Act arising from employment at the project during the taxable year, as reflected on the IRS forms W-2 for each such employee.

"Memorandum of Understanding" or "MOU" means the memorandum of understanding entered between a taxpayer and the Department under Section 605-1025(d) of the Statute and Section 521.90 of this Part.

"New Employee" means a full-time employee or full-time equivalent job or employee first employed by the data center owner or operator or a tenant of the data center in the project and who is hired on or after the effective date of the MOU entered into between the Department and the data center owner or operator.

The term "New Employee" does not include:

an employee of the data center owner or operator or a tenant of the data center who was previously employed in Illinois by a related member (as that term is defined in Section 5.5 of the Economic Development for a Growing Economy Act [35 ILCS 10]) of the data center owner or operator or a tenant of the data center and whose employment was shifted to the data center after the data center owner or operator entered into the MOU;

an employee of the data center owner or operator or a tenant of the data center who was previously employed in Illinois by the data center owner or operator or a tenant of the data center and whose employment was shifted to the project after the data center owner or operator entered into the MOU; or

any individual who has a direct or an indirect ownership interest of at least 5% in the profits, equity, capital, or value of the taxpayer or a child, grandchild, parent, or spouse, other than a spouse who is legally separated from the individual, of any individual who has a direct or an indirect ownership interest of at least 5% in the profits,

equity, capital, or value of the data center owner or operator or a tenant of the data center.

However, an employee shall be considered a new employee under the MOU if:

the employee performs a job that was previously performed by an employee who was treated under the MOU as a new employee and promoted by the data center owner or operator or a tenant of the data center to another job; or

the employee fills a job vacancy that had been continuously vacant for the 184-day period immediately preceding the date of the MOU. A job vacancy whose incumbent is on approved leave, is locked out, or is on strike is not a vacancy.

"Operation and Maintenance" means the day-to-day activities related to systems and workflows within a data center, including installing and maintaining network resources, ensuring data center security, monitoring power and cooling systems, upkeep, customer environment support, system and component upgrades and refreshes, and incident resolution.

"Payroll" shall mean *the wages paid during the taxable year to a full-time or part-time employee of a construction contractor employed by a certified data center if those wages are paid for the construction of a new data center.* [35 ILCS 5/229(a)]

"Placed in Service" means the earlier of:

when the project is in a state or condition of readiness and availability for specifically assigned functions; or

the end of the 60-month period identified in the MOU.

"Project" means the development at the location set forth in the MOU.

"Project Labor Agreement" means an agreement with a bona fide labor organization that satisfies the provisions of the Illinois Project Labor Agreements Act [30 ILCS 571] and that is approved by the Department. For an existing data center for which construction took place prior to June 28, 2019 (the effective date of the Statute) and for which no project labor agreement was entered into simultaneously, the applicant may provide evidence as required by the Department in the form of affidavits and other supporting documentation from the

contractor and the applicant demonstrating compliance with the standard provisions of a project labor agreement. Proof of the project labor agreements must be accompanied by evidentiary materials from the labor organization affirming participation in the project. Data centers that use multiple contractors during the course of the 60-month period specified in the MOU must enter into a project labor agreement approved by the Department for the labor component of any construction used to achieve the minimum required capital investment.

"Project Costs" include all costs incurred or to be incurred by the data center owner or operator or a tenant of the data center directly related to the project, including, but not limited to, all:

capital investment;

infrastructure development costs;

debt service, except refinancing of current debt; and

non-capitalized research and development, job training and education, lease, and relocation costs.

The value of State or other governmental incentives, including discretionary tax credits, discretionary job training grants, or the interest savings of below market rate loans, shall not be included as project costs.

"Qualified Tangible Personal Property" means:

electrical systems and equipment; climate control and chilling equipment and systems; mechanical systems and equipment; monitoring and security systems; emergency and back-up power generators; hardware; computers; servers; data storage devices; network connectivity equipment; racks; cabinets; telecommunications cabling infrastructure; raised floor systems; peripheral components or systems; software; mechanical, electrical or plumbing systems; battery systems; cooling systems and towers; temperature control systems; other cabling;

other data center infrastructure equipment and systems necessary to operate qualified tangible personal property, including fixtures;

component parts of any of the foregoing, including installation, maintenance, repair, refurbishment, and replacement of qualified tangible personal property to generate, transform, transmit, distribute or manage electricity necessary to operate qualified tangible personal property; and

all other tangible personal property that is essential to the operations of a computer data center.

"Qualified Tangible Personal Property" also includes building materials physically incorporated into the qualifying Illinois data center and any described tangible personal property detailed in Illinois Department of Revenue rules (see 86 Ill. Adm. Code 130.1957). [20 ILCS 605/605-1025(c)]

"Qualifying Illinois Data Center" means a new or existing data center that:

is located in the State of Illinois;

in the case of:

an existing data center, made a capital investment of at least \$250,000,000 collectively by the data center operator and the tenants of the data center over the 60-month period immediately prior to January 1, 2020 or committed to make a capital investment of at least \$250,000,000 over a 60-month period commencing before January 1, 2020 and ending after January 1, 2020; or

a new data center, or an existing data center making an upgrade, makes a capital investment of at least \$250,000,000 over a 60-month period beginning on or after January 1, 2020;

results in the creation of at least 20 full-time or full-time equivalent new jobs over a period of 60 months by the data center operator and the tenants of the data center, collectively, associated with the operation or maintenance of the data center. Those jobs must have a total compensation equal to or greater than 120% of the average wage paid to full-time employees in the county where the data center is located, as determined by the U.S. Bureau of Labor Statistics; and

within 2 years after being placed in service, certifies to the Department that it is carbon neutral or attains certification under one or more of the following green building standards:

BREEAM for New Construction or BREEAM In-Use;

ENERGY STAR;

Envision;

ISO 50001-energy management;

LEED for Building Design and Construction or LEED for Operations and Maintenance;

Green Globes for New Construction or Green Globes for Existing Buildings;

UL 3223; or

an equivalent program approved by the Department. [20 ILCS 605/605-1025(c)]

"Responsible Bidder" means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability that will assure good faith performance. A responsible bidder or offeror shall not include a business or other entity that does not exist as a legal entity at the time a bid or offer is submitted for a State contract.

"Statute" means Section 605-1025 of the Department of Commerce and Economic Opportunity Law [20 ILCS 605] (Data Center Investment).

"Taxable Year" means any 12 month consecutive accounting period for keeping records and reporting income and expenses. This does not preclude the data center owner or operator or a tenant of the data center from seeking a credit for a short or stub taxable year in the event that either:

the data center owner or operator or a tenant of the data center was not in existence for an entire taxable year; or

the data center owner or operator or a tenant of the data center changed its accounting period.

"Tenant" means a tenant of the data center owner or operator at the project.

"Underserved Area" means *a geographic area that meets any one of the following criteria:*

the area has a poverty rate of at least 20%, according to the latest federal decennial census, the most recent American Community Survey released

by the *U.S. Census Bureau*, or other appropriate data source produced by the U.S. Census Bureau;

75% or more of the children in the area are eligible to participate in the federal free lunch or reduced-price meals program, according to reported statistics from the State Board of Education;

20% or more of the households in the area receive assistance under the Supplemental Nutrition Assistance Program (SNAP) according to data from the U.S. Census Bureau; or

the area has an average unemployment rate, as determined by the Department of Employment Security, that is more than 120% of the national unemployment average, as determined by the U.S. Department of Labor, for a period of at least 2 consecutive calendar years preceding the date of the application. [35 ILCS 5/229(a)(1) through (4)]

"Wages" means wages, salaries, commissions, tips and other compensation subject to Medicare tax as indicated in Box 5 of an employee's Internal Revenue Service Form W-2.

Section 521.30 Eligible Applicants

Any data center owner or operator of a data center located or to be located in the State of Illinois may apply to the Department for certification of the data center if the subject data center satisfies the definition of "qualifying Illinois data center" set forth in Section 605-1025(c) of the Statute.

Section 521.40 Eligibility Determination

- a) Any taxpayer that owns or operates a data center in the State of Illinois, or a data center to be constructed and is planned to be located in the State of Illinois, may be an "applicant".
- b) A taxpayer may not execute more than one MOU with respect to a single address or location for the same period of time. This provision does not preclude the applicant from entering into an additional MOU after the expiration of an earlier MOU to the extent the taxpayer's application otherwise satisfies the terms and conditions of the Statute and is approved by the Department.
- c) In order to qualify for the tax exemptions under Section 605-1025(a) of the Statute, an applicant's project must meet the definition of a qualifying Illinois data center as defined in Section 521.20.

- d) In order to qualify for the tax credits under Section 605-1025(a) of the Statute, an applicant's project must be approved as a qualifying Illinois data center and the new data center must be located in an underserved area as defined in Section 521.20.

Section 521.50 Form of Application

- a) Applications will be accepted at any time during the year. The Department will provide interested applicants with an application package upon request. Submission of an application does not commit the Department to award assistance or pay any costs, including any application fee, incurred by the applicant in the preparation of an application.
- b) Any taxpayer proposing a data center project either constructed or to be constructed in Illinois may request consideration by application to the Department in which the applicant states its intent to make a capital investment of at least \$250,000,000 and to hire at least 20 new full-time equivalent employees, collectively between the applicant and tenants of the proposed data center, within a specified 60-month period.
- c) Written applications are required and must be submitted on the standard application form provided by the Department. Applications shall be submitted to the Department office location or electronic mail address identified in the application.
- 1) The application shall include:
- A) Legal Applicant – name, address, telephone number of each applicant; key contact, title, telephone number and electronic mail address; company Federal Employer Identification Number (FEIN) or the Illinois Business Tax (IBT) number; and whether the proposed project is in an underserved area. The application shall be accompanied by a Certificate of Good Standing from the Office of the Illinois Secretary of State for each applicant or other proof of authority to transact business in the State.
 - B) Investment Information – a detailed description of the capital investment the taxpayer or its tenants will make in the data center project. This shall include, but is not limited to, a summary of the eligible investment, when the qualified property will be placed in service, and a detailed description of the applicant's commitment to make a minimum eligible investment of at least \$250,000,000, and the applicant's plan to create at least 20 new full-time or full-time

equivalent jobs involved in the operation and maintenance of the data center, collectively with the applicant's tenants. The applicant should include supporting documentation regarding this investment information for the Department to properly evaluate the project.

C) Green Building Certification –

i) supporting documentation that the qualified property meets the green building standards, with the certification that designates the building as one or more of the following: carbon neutral; BREEAM for new construction; BREEAM In-Use; ENERGY STAR; Envision; ISO 50001-energy management; LEED for Building Design and Construction; LEED for Operation and Maintenance; Green Globes for New Construction; Green Globes for Existing Buildings; UL 3223; or another, substantially equivalent, designation approved by the Department.

ii) in the event the applicant seeks to demonstrate an alternative certification, an explanation and supporting documentation as to how the program is "equivalent" to those programs and categories specifically enumerated in the Act. In the event the certification has not yet been achieved at the time of application, the taxpayer must provide documentation pursuant to the terms of the MOU entered into between the company and the taxpayer.

D) Job Creation – a detailed description of the full-time and full-time equivalent jobs to be created at the data center, including both those jobs involved in the operations and maintenance of the data center and other positions, the annual average wages associated with these job categories, and the actual or anticipated start date for these positions. The application must also include the county average annualized pay for the county in which the data center is, or is to be, located. To the extent known at the time of application, the applicant shall identify any tenants, actual or anticipated new hiring by the tenants, and whether and how the new jobs will be associated with the operations or maintenance of the data center.

E) Other provisions – any other provisions or information that the Department determines is necessary to facilitate the Department's evaluation of the application.

- 2) The applicant shall additionally submit:
 - A) Tax Clearance, as follows:
 - i) to the Illinois Department of Revenue, a Form ITR-1; and
 - ii) to DCEO, proof of tax clearance from the Illinois Department of Revenue.
 - B) Project Labor Agreement – evidence of a project labor agreement with respect to the project at the time of the application. If the data center has not been constructed and when the evidentiary material is not available at the time of application, proof of the project labor agreement must be provided to the Department pursuant to the terms of the MOU applicable to the project.
- d) The applicant is responsible for the accuracy of all data, information and documentation required by subsection (c). Once submitted, applications shall become the property of the Department.
- e) Any materials or data made available or received by any agent or employee of the Department from an applicant for, or a recipient of a tax exemption or credit under this Part, shall be presumed confidential, in its entirety or in part, and exempt from disclosure under Section 7 of the Freedom of Information Act [5 ILCS 140/7].

Section 521.60 Application Review

- a) Prior to substantive evaluation of an application, the Department will screen all applications to determine that all requirements of the application package have been addressed. Applicants will be notified of deficiencies in applications and given an opportunity to correct those deficiencies through submission of additional documentation.
- b) The Department will evaluate applications in accordance with the policies and procedures adopted by the Department or its Director. In evaluating applications, the Department will determine that all of the following conditions exist:
 - 1) the applicant's project intends to make capital investments of at least \$250,000,000 in the State and hire at least 20 new employees involved in the operations or maintenance of the data center;
 - 2) the applicant's project is or will:

- A) *be carbon neutral; or*
- B) *attain certification under one or more of the green building standards* required of a qualified Illinois data center as defined in see Section 521.20; and

- 3) the applicant's contractor has entered into a project labor agreement approved by the Department; provided, however, that an existing data center for which construction was completed prior to June 28, 2019, the applicant shall provide evidence, as required by the Department, in the form of affidavits and other supporting documentation from the contractor and the applicant demonstrating compliance with the standard provisions of a project labor agreement. Data centers that use multiple contractors during the course of the 60-month period specified in the MOU must enter into a project labor agreement approved by the Department for the labor component of any construction used to achieve the minimum required capital investment.

Section 521.70 Application Denial/Approval

- a) Applicants shall be notified in writing as to the Department's evaluation of all completed applications. If the Department denies an application, it will specify the reasons for the denial in writing and allow the applicant 30 days to amend and resubmit its application for evaluation. If the applicant disagrees with the Department's decision, it may seek relief through the process afforded in the Department's Administrative Hearing Rules (56 Ill. Adm. Code 2605).
- b) The Department will negotiate a formal MOU with applicants determined to be eligible under the Statute.

Section 521.80 Determination of Term of Exemptions and Amount of Credit

- a) The Department will determine the duration of the term of exemptions and the amount of credit awarded under the Statute. The duration of the exemptions for any certified data center may not exceed 20 years.
- b) All certified data centers, and, when applicable, data center tenants, shall receive an initial 5 year certificate of exemption. At the expiration of this initial 5 year period, certified data centers, and, when applicable, data center tenants, may apply to the Department for renewals of certificates of exemption for additional 5 year periods not to exceed the 20 year period running from the effective date of the MOU.

- 557
- 558 c) *The amount of the credit for any certified data center determined by the*
- 559 *Department to be located in an underserved area shall be 20% of the wages paid*
- 560 *during the taxable year to a full-time or part-time employee of a construction*
- 561 *contractor employed by a certified data center, if those wages are paid for the*
- 562 *construction of a new data center. [35 ILCS 5/229(a)]*
- 563
- 564 d) *In no event shall a credit under the Statute reduce the taxpayer's liability to less*
- 565 *than zero. If the amount of the credit exceeds the tax liability for the year, the*
- 566 *excess may be carried forward and applied to the tax liability of the 5 taxable*
- 567 *years following the excess credit year. [35 ILCS 5/229(b)]*
- 568

569 **Section 521.90 Data Centers Memorandum of Understanding**

570

- 571 a) The Department and each qualifying data center seeking a certificate of
- 572 exemption or tax credits shall enter into an MOU. The MOU shall specify the
- 573 terms and conditions of the exemptions or credits. It shall define the rights and
- 574 responsibilities of the Department and of the data center owner or operator (and, if
- 575 applicable, its tenants). Provisions with which the data center owner/operator/
- 576 tenants will be contractually bound to comply include, but are not limited to, the
- 577 following:
- 578
- 579 1) a detailed description of the project that is the subject of the MOU,
- 580 including the location and amount of the investment and jobs created
- 581 above the current project or statewide baselines;
- 582
- 583 2) the duration of the exemptions or credits;
- 584
- 585 3) *the details for determining the amount of capital investment to be made*
- 586 *[20 ILCS 605/605-1025(d)];*
- 587
- 588 4) *the number of new jobs created*, including a specific method for
- 589 determining the number of new employees and any relevant baseline
- 590 headcount numbers;
- 591
- 592 5) a provision that the certified data center provide an agreed upon
- 593 procedures audit performed by an independent, licensed certified public
- 594 accounting firm attesting that the certified data center has made the capital
- 595 investment, hired the new employees specified in the MOU, and entered
- 596 into a project labor agreement with respect to the project;
- 597
- 598 6) *the timeline for achieving the capital investment and new job goals [20*
- 599 *ILCS 605/605-1025(d)];*

- 7) a provision that *the contractor and all subcontractors shall comply with the requirements of the Illinois Procurement Code as they apply to responsible bidders and to present satisfactory evidence of that compliance to the Department* [20 ILCS 605/605-1025(f)];
- 8) a provision that *new and existing data centers seeking a certificate of exemption for the rehabilitation or construction of data centers in the State shall require the contractor to enter into a project labor agreement approved by the Department* [20 ILCS 605/605-1025(g)]; provided, however, that, for an existing data center for which construction began prior to June 28, 2019, the applicant shall provide evidence, as required by the Department, in the form of affidavits and other supporting documentation from the contractor and the applicant demonstrating compliance with the standard provisions of a project labor agreement. Proof of project labor agreements must be accompanied by evidentiary materials from the labor organization affirming participation in the project;
- 9) *repayment obligations, should those goals not be achieved, and any conditions under which repayment by the qualifying data center or data center tenant claiming the exemption or credit will be required* [20 ILCS 605/605-1025(d)];
- 10) a requirement that the qualifying data center or data center tenant claiming the exemption or credit shall annually report to the Department the number of new employees, including those specifically associated with the operation or maintenance of the data center, the total overall headcount associated with the data center, estimated value of taxes avoided due to the exemptions and credits received, and any other information the Department requires to ensure compliance with the Statute, the MOU, or other applicable law;
- 11) a requirement that the Director of the Department is authorized to verify with the appropriate State agencies information required to be reported by the qualifying data center or data center tenant;
- 12) a requirement that the qualifying data center shall provide written notification to the Department not more than 30 days after it makes or receives a proposal that would transfer the qualifying data center's State tax liability to a successor entity;

- 13) a requirement that the qualifying data center shall provide written notification to the Department not more than 30 days after the qualifying data center determines that the minimum job creation or retention, employment payroll, or investment no longer is being or will be achieved or maintained as set forth in the MOU;
 - 14) a provision that, if the total number of new employees or baseline employment falls a specified level, the allowance of the exemptions or credits shall be suspended until the number of new employees or baseline employment equals or exceeds the amounts set forth in the MOU; and
 - 15) *other provisions as deemed necessary by the Department* [20 ILCS 605/605-1025(d)].
- b) Data center tenants seeking separate certificates of exemption in the name of the data center shall execute a separate MOU with the qualifying data center in the form provided by the Department. The MOU must be submitted to the Department. If the Department finds that the MOU is acceptable under the Statute and this Part, it will acknowledge the MOU's appropriateness prior to the execution of any certificate of exemption.

Section 521.100 Certificate of Exemption or Verification

- a) Department-Qualifying Data Center MOU
Upon receipt of a fully-executed MOU between the qualifying data center and the Department, the Department will issue to the qualifying data center a certificate of exemption demonstrating that the qualifying data center's qualifying purchases are exempt from the taxes, as set forth in Section 605-1025(a).
- b) Qualifying Data Center-Tenant MOU
Upon receipt of a fully-executed MOU between the qualifying data center and its tenant and acknowledged by the Department (or Tenant Participation Certificate Memorandum of Understanding, a form of which is included with the MOU between the Department and the data center owner or operator) as referenced in Section 90(b), the Department will issue to the data center tenant a certificate of exemption demonstrating that the data center tenant's qualifying purchases are exempt from the taxes, as set forth in Section 605-1025(a) of the Statute.
- c) A qualifying data center located in an underserved area, as certified by the Department, *for taxable years beginning on or after January 1, 2019*, shall be awarded *credits against the taxes imposed under Section 201(a) and (b) of the Illinois Income Tax Act, as provided in Section 229 of that Act.* [20 ILCS 605/605-1025(d)]

- 1) The qualifying data center shall notify the Department, on forms provided by the Department, at the end of the taxable year for which a credit is sought, *the wages paid during the taxable year to a full-time or part-time employee of a construction contractor employed by a certified data center, if those wages are paid for the construction of a new data center in an underserved area;*
- 2) Upon receipt of valid proof from the qualifying data center, the Department will provide a certificate of verification equal to *20% of the wages paid during the taxable year to a full-time or part-time employee of a construction contractor employed by a certified data center if those wages are paid for the construction of a new data center in an underserved area.* [35 ILCS 5/229(a)]

Section 521.110 Noncompliance with Memorandum of Understanding

- a) If the Department determines that a certified data center or data center tenant that has received a certificate of exemption or verification for credits under the Statute is not complying with the requirements of the MOU or all of the provisions of the Statute, the Director shall provide notice to the certified data center or data center tenant of the alleged noncompliance, and allow the certified data center a hearing under Article 10 of the Illinois Administrative Procedure Act [5 ILCS 100]. If, after notice and any hearing, the Director determines that a noncompliance event exists, the Director shall issue to the Illinois Department of Revenue notice to that effect, stating the noncompliance date. Alleged noncompliance shall include, but is not limited to, the following:
 - 1) a demonstration that the certified data center or data center tenant failed materially to comply with the terms and conditions of the MOU;
 - 2) a determination upon investigation that the certified data center or data center tenants, or any of their agents or representatives, provided false or misleading information to the Department; or
 - 3) a failure to submit annual reports as required by the MOU.
- b) The Department will notify a certified data center or data center tenant, in writing, that its certification of exemption is subject to revocation. The notice shall include the reason for revocation and the date and location of a hearing to be held (see 56 Ill. Adm. Code 2605 (Administrative Hearing Rules)).

- 727 c) Following revocation, the Department shall refer the matter to the Director of the
728 Illinois Department of Revenue and request proceedings be initiated to recover
729 wrongfully exempted State taxes or an erroneous refund, within the meaning of
730 the Illinois Income Tax Act.